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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

RIANA BUFFIN and CRYSTAL
PATTERSON, on behalf of themselves and
others similarly situated,

Plaintiffs,

v.

VICKI HENNESSY in her official capacity
as the San Francisco Sheriff, *et al.*,

Defendants.

CASE NO. 4:15-cv-04959-YGR

**NOTICE OF STIPULATED FINAL
JUDGMENT REMEDYING
CONSTITUTIONAL VIOLATION**

1 Plaintiffs and Defendant the San Francisco Sheriff are pleased to inform the Court that,
2 with the assistance of Chief Magistrate Judge Spero, they have reached agreement as to the
3 appropriate remedy to be imposed in this case, with two exceptions. The Stipulated Final
4 Judgment Remediating Constitutional Violation is attached as **Exhibit A**.

5 First, the parties have agreed to modify the procedures for seeking alterations on release,
6 as currently reflected in California Penal Code § 1269c, in two ways: (1) pursuant to Section IV.A
7 of Exhibit A, for arrestees charged with an offense not enumerated in California Penal Code
8 § 1270.1, a peace officer may file a declaration to extend the 18-hour automatic release deadline
9 by 12 hours if there is reasonable cause to believe that an arrestee may not appear at arraignment,
10 or poses a threat to public safety; and (2) pursuant to Section IV.B of Exhibit A, for arrestees
11 charged with offenses not enumerated in California Penal Code § 1270.1(a), the arrestee or their
12 attorney, friend or family member shall have the right to submit an application under § 1269c to
13 the magistrate or commissioner seeking a swifter judicial determination and release than the
14 automatic 18-hour release provision. Plaintiffs also seek to modify these procedures a third way
15 (Section IV.C), which is to provide all arrestees charged with offenses enumerated in California
16 Penal Code § 1270.1(a) the right to submit an application (by the arrestee or their attorney, friend
17 or family member) under § 1269c to the magistrate or commissioner seeking OR release prior to
18 arraignment. The Sheriff does not stipulate to this provision and takes no position on whether the
19 Court should adopt it. The parties agree that the Court's decision on this issue shall not impact
20 any other provision of the stipulated final judgment.

21 Second, per Section VI of Exhibit A, the parties have not reached agreement as to
22 attorneys' fees and costs, and expect to submit briefs on the matter to the Court following the entry
23 of final judgment if an agreement as to fees and costs cannot ultimately be reached.

24 We respectfully request that the Court enter final judgment at its earliest convenience, so
25 that the relevant time periods for implementation can begin. We would of course be pleased to
26 address any questions the Court may have.

27 //

28 //

1 Dated: August 30, 2019

Respectfully submitted,

LATHAM & WATKINS LLP

Robert E. Sims

Sadik Huseny

Tyler P. Young

By: /s/ Sadik Huseny

Sadik Huseny

Attorneys for Plaintiffs

Riana Buffin and Crystal Patterson

8 Dated: August 30, 2019

Respectfully submitted,

DENNIS J. HERRERA

City Attorney

By: /s/ Jeremy M. Goldman

Jeremy M. Goldman

Attorneys for Defendant

Sheriff Vicki Hennessy

SIGNATURE ATTESTATION

I, Sadik Huseny, am the ECF user whose ID and password are being used to file this Notice of Stipulated Final Judgment Remediating Constitutional Violation. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that concurrence in the filing of this document has been obtained from each of the other Signatories.

Dated: August 30, 2019

/s/ Sadik Huseny
Sadik Huseny

EXHIBIT A

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

RIANA BUFFIN and CRYSTAL
PATTERSON, on behalf of themselves and
others similarly situated,

Plaintiffs,

v.

VICKI HENNESSY in her official capacity
as the San Francisco Sheriff, *et al.*,

Defendants.

CASE NO. 4:15-cv-04959-YGR

**STIPULATED FINAL JUDGMENT
REMEDYING CONSTITUTIONAL
VIOLATION**

As set forth in the Order Granting Plaintiffs' Motion for Summary Judgment, the San Francisco Sheriff's Department's use, as required by current California law, of the Superior Court of California, County of San Francisco Felony-Misdemeanor Bail Schedule ("Bail Schedule") violates the 14th Amendment of the U.S. Constitution. Accordingly, to remedy the Constitutional violation and harm, and pursuant to stipulation by the parties, the Court orders the following for purposes of pre-arraignment release procedures:

(I) The San Francisco Sheriff's Department (hereafter "Sheriff") is enjoined from using the Bail Schedule, or any form or derivative thereof that requires or has as its effect that the existence and duration of pre-arraignment detention is determined by an arrestee's ability to pay.

(II) For all arrestees booked on an offense not enumerated in California Penal Code § 1270.1(a), and who are arrested without a warrant and are not otherwise ineligible for pre-arraignment OR release under state law:

(A) The arrestee's PSA Report, along with all other portions of the OR Workup reasonably available to the OR Project, shall be submitted to the San Francisco Superior Court within eight (8) hours from the time of booking.¹

(B) The Sheriff shall release the arrestee at eighteen (18) hours from the time of booking if: (1) the Superior Court has not rendered a decision on OR release at that time (which decision shall otherwise control) and (2) the PSA Report for the arrestee does not indicate "release not recommended."

¹ For purposes of this Stipulated Judgment, "Own Recognizance" or "OR" release refers to any release not conditioned on payment of bail, and includes releases subject to any non-financial conditions. The OR Workup refers to the report created by the OR Project of the San Francisco Pretrial Diversion Project (hereafter, "OR Project") which contains the arrestee's criminal history, the police report, a cover sheet, and the PSA Report. "Booking" refers to the time that ID confirmation for an arrestee is received. The Sheriff shall maintain all reasonable procedures to ensure that ID confirmation is received as swiftly as possible. To the extent circumstances beyond the OR Project's or the Sheriff's control render the completion of the PSA Report impossible within eight (8) hours, the OR Project will exercise best efforts to complete the PSA Report as soon as feasible. The automatic release provision of Section II does not apply in cases where the OR Project has been unable to complete the PSA Report for reasons beyond the OR Project's or the Sheriff's control.

1 (C) Release pursuant to this Section shall treat as binding the
2 recommendation of the PSA Report as to any conditions of release, and
3 release procedures shall be carried out as if the release
4 recommendations in the PSA Report had been adopted by the Superior
5 Court. No arrestee shall be entitled to release without signing an
6 agreement to be bound by the conditions of release contained in the
7 PSA Report's recommendation. An arrestee who is being released
8 subject to recommended Assertive Case Management (ACM)
9 procedures by the OR Project shall not be released from custody before
10 completing any procedures necessary to implementing the release
conditions.

11 (III) For all arrestees booked on an offense enumerated in California Penal Code
12 § 1270.1(a), for whom pre-arraignment OR release is not available under current
13 law, the provisions of Section II shall not apply.

14 (IV) The procedures for seeking alterations on release, as currently reflected in
15 California Penal Code § 1269c, shall be modified as follows:

16 (A) For all arrestees booked on an offense not enumerated in California
17 Penal Code § 1270.1(a), a peace officer who (1) has reasonable cause
18 to believe that an arrestee may not appear at arraignment, or poses a
19 threat to public safety, or (2) expects that specific information not yet
20 provided will be delivered within the next twelve (12) hours and will
21 probably provide reasonable cause to believe that an arrestee may not
22 appear at arraignment, or poses a threat to public safety, shall prepare
23 a declaration under penalty of perjury setting forth the facts and
24 circumstances in support of his or her belief and file it with a magistrate
25 or commissioner. Such a declaration may be filed at any point
26 throughout the 18-hour period referenced in Section II, and will,
without further judicial action, serve to extend the 18-hour period by
an additional twelve (12) hours.

27 (B) For all arrestees booked on an offense not enumerated in California
28 Penal Code § 1270.1(a), the arrestee or their attorney, friend or family

1 member shall have the right to submit an application under California
2 Penal Code § 1269c to the magistrate or commissioner seeking a
3 swifter judicial decision than the automatic 18-hour release provision
4 provided for in Section II. Such an application shall not alter the
5 obligation in Section II.A.

6 (C) For all arrestees booked on an offense enumerated in California Penal
7 Code § 1270.1(a), the arrestee or their attorney, friend or family
8 member shall have the right to submit an application under California
9 Penal Code § 1269c to the magistrate or commissioner seeking OR
release prior to arraignment.

10 (V) The obligations of this Stipulated Judgment are conditioned on the enactment of
11 legislation by the City and County of San Francisco approving the Stipulated
12 Judgment and providing additional funding to enable the OR Project to operate
13 twenty-four (24) hours a day, seven (7) days a week. The Sheriff shall expend all
14 reasonable efforts to seek a final vote on the enactment of such legislation within
15 ninety (90) days of entry of this Stipulated Judgment. The Stipulated Judgment
16 shall take full effect ninety (90) days after the enactment of such legislation. If the
17 City and County of San Francisco has, notwithstanding the Sheriff's efforts, not
18 enacted such legislation within ninety (90) days of entry of this Stipulated
19 Judgment, the Stipulated Judgment shall be vacated, and unless the parties jointly
20 notify the Court that they have agreed to extend the time, the Court shall issue its
own final judgment in this matter.

21 (VI) The parties shall separately file, and the Court shall separately rule, on the issue of
22 attorneys' fees and costs.

23 (VII) The Court shall retain jurisdiction over this matter until eighteen (18) months after
24 the terms of this injunction go into full effect pursuant to Section V, and Plaintiffs
25 shall be provided comprehensive reports every three (3) months in order to monitor
26 the Sheriff's compliance with this Stipulated Judgment and its efficacy at
27 remedying the constitutional harm, and to bring matters to the Court's attention as
28 appropriate. The parties shall meet and confer in good faith so as to ensure the
reports provided are sufficient for such monitoring purposes. The Sheriff will make

1 good faith efforts to begin to gather data regarding time of arraignment for all
2 arrestees. The reports are currently expected to include:

- 3 • Data regarding arrestees' initiation of booking, charges, time of ID
4 Confirmation, and time of PSA Report submission and OR Workup
5 submission(s);
- 6 • Data regarding PSA Report recommendations;
- 7 • Data regarding the operation of Section II, including but not limited
8 to data regarding the arrestees deemed ineligible for pre-arraignment
9 release pursuant to Section II.B;
- 10 • Data regarding OR judicial decisions;
- 11 • Data regarding all automatic releases pursuant to Section II;
- 12 • Data regarding individual arrestees' total length of incarceration and
13 the manner and timing of any release;
- 14 • Data regarding the number of affidavits submitted by peace officers
15 pursuant to Section IV.A, including information on timing;
- 16 • Data regarding the number of applications submitted on behalf of
17 arrestees pursuant to Sections IV.B and IV.C, including information
18 on timing and ultimate determinations, to the extent such
19 information (if any) is available.

20 The first report shall include data from the year prior, including and up to the first
21 three months from the date the provisions of this Order become operative and shall
22 be due thirty (30) days after the expiration of that period, with additional reports to
23 be filed every three months thereafter. This provision imposes no obligation except
24 as to data in the possession of the Sheriff or the OR Project, or reasonably available
25 to them, and shall not require the provision of data other than is maintained or will
26 be maintained in the ordinary course of business.

27 (VIII) This Stipulated Judgment is intended to address the timing of release decisions pre-
28 arraignment and is not otherwise intended to interfere with changes to the processes
by which the Superior Court makes release determinations, including changes to
the way in which risk assessments are conducted or by which entity they are
conducted. Nothing in this Stipulated Judgment shall prevent the Sheriff from
releasing any person subject to terms of pretrial release who has received an
individualized determination by a judicial officer.

1 (IX) To the extent the Superior Court, California legislature, or any other entity seeks to
2 implement material changes that may implicate the terms of this Stipulated
3 Judgment or the pre-arraignment processes set forth herein, including to the manner
4 in which high risk arrestees may be identified by the PSA Report for the purposes
5 of the exception to the automatic release provisions of Section II.B, the parties shall
6 meet and confer over potential alterations to the terms of this Stipulated Judgment
7 and thereafter notify this Court of any joint proposal or inability to reach agreement,
8 which may include petitioning the Court to dissolve or modify the Stipulated
9 Judgment.

10 Dated:

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The Hon. Yvonne Gonzalez Rogers
United States District Judge
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